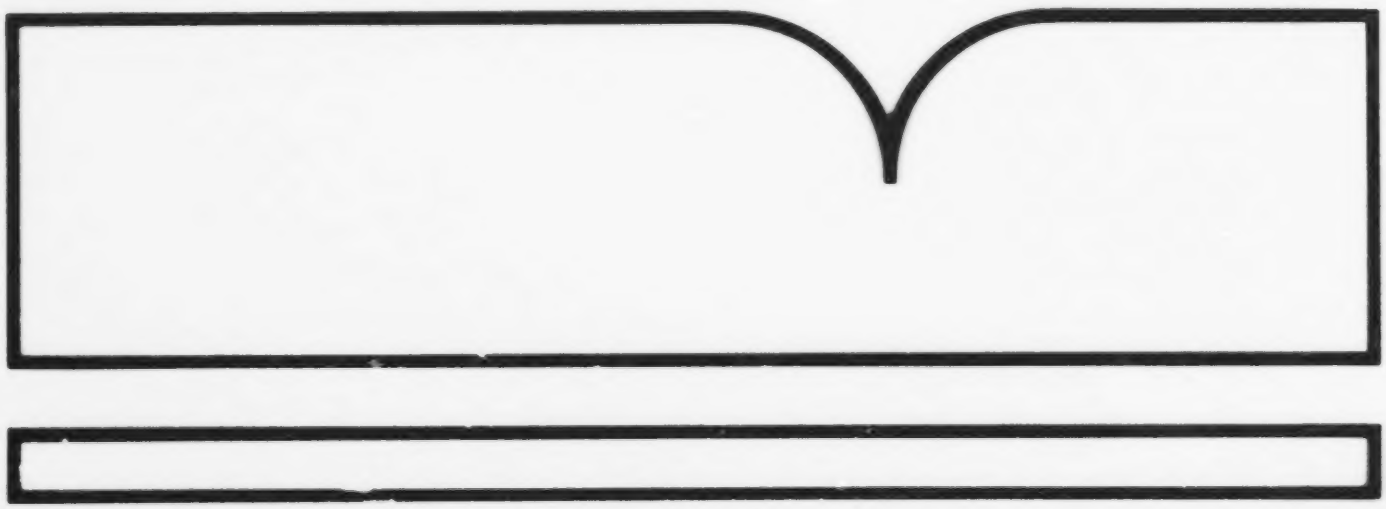
PB90-267402

Environmental Enforcement: A Citizen's Guide

(U.S.) Environmental Protection Agency, Washington, DC

Mar 90



U.S. Department of Commerce
National Technical Information Service
NTIS

TECHNICAL REPORT DATA
(Please read Instructions on the reverse before complet

1. REPORT NO.	2.	3.
EPA/OE/LE-133		2390-267402

4. TITLE AND SUBTITLE	5. REPORT DATE
Environmental Enforcement : A Citizen's Guide	March 1990
	6. PERFORMING ORGANIZATION CODE
7. AUTHOR(S)	8. PERFORMING ORGANIZATION REPORT NO.
Office of Enforcement, EPA	EPA/OE/LE-133
9. PERFORMING ORGANIZATION NAME AND ADDRESS	10. PROGRAM ELEMENT NO.
Office of Enforcement LE-133, U.S. EPA 401 M Street, SW Washington, DC 20460	11. CONTRACT/GRANT NO.
12. SPONSORING AGENCY NAME AND ADDRESS	13. TYPE OF REPORT AND PERIOD COVERED
Same as 9.	Final
	14. SPONSORING AGENCY CODE

15. SUPPLEMENTARY NOTES

Originally developed as part of Earth Day Publications.

16. ABSTRACT

This booklet explains the complex functions of the Environmental Protection Agency's EPA's environmental law enforcement mechanism. The structure of the Agency's enforcement apparatus, the methods and the enforcement officials who use them are identified and described. This booklet is designed as a guide for all citizens and can be used as an overview for anyone interested in the environmental enforcement system. This booklet summarizes the government process that enforcement officials use when taking action against someone for not complying with environmental laws. It includes discussion about: inspections, criminal investigations, litigation, deterrence and how the individuals of the public can help.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Environmental Enforcement, Enforcement, Criminal Investigations, Public Role, Environmental Litigation		

18. DISTRIBUTION STATEMENT	19. SECURITY CLASS *(This Report)*	21. NO. OF PAGES
Unlimited		34
	20. SECURITY CLASS *(This page)*	22. PRICE

EPA Form 2220-1 (Rev. 4-77) PREVIOUS EDITION IS OBSOLETE

United States
Environmental Protection
Agency

March 1990

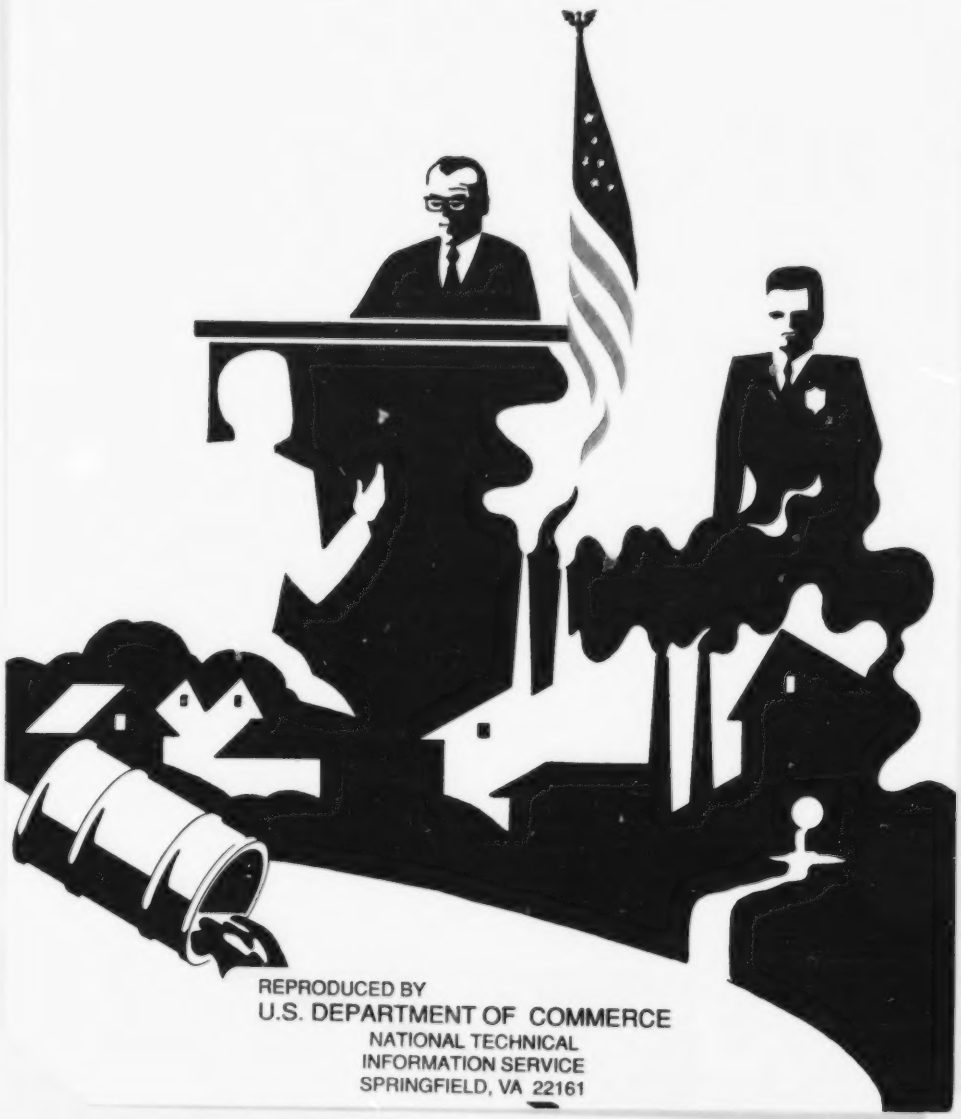
PB90-267402

Office Of Enforcement (LE-133)

EPA

Environmental Enforcement

A Citizen's Guide



REPRODUCED BY
U.S. DEPARTMENT OF COMMERCE
NATIONAL TECHNICAL
INFORMATION SERVICE
SPRINGFIELD, VA 22161

Contents

Introduction 1

Who Are the Enforcers? 2

Compliance Monitoring — Checking Up 6

Inspections 7

Criminal Investigations — Catching Environmental Criminals 12

Enforcement Actions — The Tools We Use 14

Enforcement Litigation — Resolving Violations 18

The Results of an Enforcement Case 20

Organizing the Team — How EPA Achieves High Compliance 21

Why People Obey the Law 24

The Broad Shadow of Deterrence 26

How You Can Help 28

For Further Information 32

Environmental Agencies 33

Project Coordinator: Quinlan Shea

Preface

Vigorous and effective enforcement is a cornerstone of the Environmental Protection Agency's (EPA) effort to improve the environment and protect human health. Enforcement prevents pollution. Enforcement minimizes risk. EPA enforcement makes clear that the American people view environmental degradation as not only an unacceptable business practice, but as an assault on our shared notions of responsible citizenship.

The pages that follow explain the complex functions of EPA's environmental law enforcement mechanism. The structure of the Agency's enforcement apparatus, the methods and the enforcement officials who use them are identified and described.

Citizens have an important role to play in environmental enforcement. Together, an informed citizenry and EPA can make great progress toward environmental improvement.

James M. Strock
Assistant Administrator for
Enforcement

Introduction

What if lawmakers passed an environmental law and nobody obeyed?

Environmental laws set standards for what people and institutions must do to control or prevent pollution. After enactment, it becomes the job of the federal, state and local governments and, if applicable, Indian tribes, to make sure that those who are subject to the laws know what they must do to comply. The primary federal environmental role is carried out by the Environmental Protection Agency (EPA).

Enforcement is the governmental response to people who fail to obey the laws. Some become violators out of ignorance. And there are always some who dislike the new laws and think they can violate them with impunity. EPA's enforcement program aims to deter all violations of the law.

"Enforcement" as we will discuss it here consists of all efforts to encourage compliance with environmental laws. "Compliance" refers to the condition that exists when a person or company fully obeys the law (when it complies with the law).

An environmental law without compliance would mean that pollution problems would continue and grow worse. EPA has an enforcement program to make sure the laws get the results Congress and the public want.

The fundamental aim of enforcement is to convince those who are regulated by environmental laws that it is better to comply quickly than to wait until they are caught.

Obviously, the ultimate goal is 100 percent compliance, that is, every person or company regulated by a given law would be fully obeying that law.

Who Are The Enforcers?

Environmental enforcement is a comprehensive program involving federal, state and local governments. From the nation's capital to the neighborhood you live in, there is a far-reaching network of enforcement personnel to make sure the environmental laws are obeyed.

State Governments

Virtually every federal environmental law allows state governments to develop programs for implementing the federal law in their states. When EPA has determined that the state program meets the federal requirements, EPA approves the state program. Such programs are called "delegated" or "approved" programs. Under this arrangement, the states apply the national standards and regulations by issuing and enforcing their own rules and permits.

State governments carry out the lion's share of environmental enforcement actions. For instance, most of the inspections in the state programs are done by state governments (some 80 to 90 percent as of 1988). And most of the enforcement actions are taken by states (some 70 percent of the national total under the federal air, water and hazardous waste programs).

Enforcement at the state level is carried out by a number of different agencies:

- **State environmental agencies** usually have responsibility for permits, inspections, and certain types of enforcement actions. In some states a single environmental agency handles all EPA programs, while in others several agencies divide the responsibilities. States may also delegate some of the activities to county or city governments. Your local health department may be the front-line troops against pollution.

- **The state attorney general** is the chief law enforcement official for the state, and his or her decisions have a major influence over the strength of the environmental enforcement program in the state. The attorney general also has responsibility for suing violators, at the request of state environmental agencies.

- **District attorneys** may also have responsibility for suing violators and typically represent municipalities. In some states, the District Attorney's approval is required for enforcement

Remedial worker collecting toxicity data from abandoned drums

suits to be filed by the attorney general.

The states' environmental enforcement programs vary greatly, so EPA encourages efforts among states to pool their experience and knowledge to raise their overall effectiveness. For example, one area of current sharing is criminal enforcement, because many states still lack criminal enforcement programs, even though their state legislatures may have authorized criminal prosecution.

EPA strives to work out an effective enforcement partnership with each state. This is accomplished through enforcement agreements with the separate state agencies. These agreements usually define the characteristics of a good program, using the same criteria by which EPA judges its own performance.

The agreements also spell out the circumstances under which EPA will step in and take enforcement action in an approved state program. The most common are:

- if the state requests it;
- if the state's enforcement response is not timely and appropriate (this criterion will be discussed later in this booklet);
- if the case involves national precedents; or
- if there is a violation of an EPA order or consent decree (settlement agreement).

EPA assists the states through training of technical and enforcement staff and helping state agencies develop their enforcement strategies. EPA also conducts oversight inspections to identify needs and opportunities for strengthening the state's inspection program.

Federal Government

EPA leads the federal government's environmental enforcement efforts, applying the latest sophisticated law enforcement techniques and drawing upon the specialized abilities of other federal agencies.

The headquarters organization of EPA includes a central enforcement office, the Office of Enforcement, which advises all other EPA offices on enforcement and manages EPA's litigation program. There are also specialized enforcement units attached to the offices that manage the programs pertaining to air, water, hazardous wastes, and pesticides and toxic substances.

Ten regional offices manage EPA programs in the field and conduct most of the day-to-day enforcement activities of the Agency. Where a state has been approved by EPA to implement the program, the regional office oversees the state's performance to assure consistency with the federal law. In unapproved states, the EPA regional office administers the program. Enforcement activities are carried out by three types of units:

- Program divisions for water, waste, and air (including pesticides and toxics) conduct inspections and initiate administrative enforcement actions.
- The environmental services division conducts inspections on behalf of program divisions.
- The regional counsel conducts enforcement litigation and gives legal advice to the program divisions.

The National Enforcement Investigations Center (NEIC) is a technical resource and investigative unit for EPA's civil and criminal enforcement efforts. It maintains a staff of trained criminal investigators who are deputized U.S. Marshals. Investigators are located in EPA regional offices throughout the country, where they work closely with the Regional Counsel's office and U.S. Attorneys in pursuing environmental criminals.

The Department of Justice (DOJ) plays a crucial role in EPA's enforcement activities. When EPA wishes to prosecute a violator in the U.S. Court system, EPA refers the case to DOJ, recommending prosecution. This recommendation is considered by DOJ attorneys who specialize in environmental litigation, and DOJ makes the final decision whether or not to file the case. When the case goes to court, DOJ legally represents EPA in court though EPA's legal and technical staff remain actively involved in the case.

Like EPA, the Department of Justice has its field organization, although its environmental cases are mostly handled by DOJ headquarters attorneys. DOJ's field officials are the U.S. Attorneys.

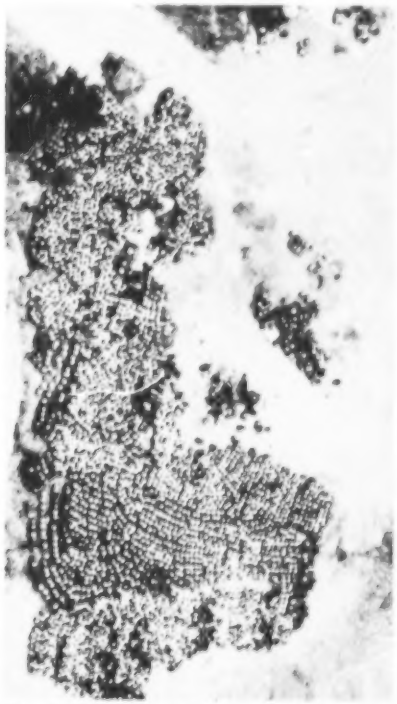
The Federal Bureau of Investigation (FBI) assists EPA in investigating and apprehending environmental criminals. The FBI also provides training for EPA staff at its Federal Law Enforcement Training Center in Glynco, Georgia.

Conducting an environmental enforcement seminar for an international audience at the Federal Law Enforcement Training Center.

Compliance Monitoring — Checking Up

The essential first step in enforcing a law is to find out who is obeying it and who is violating it. This is "compliance monitoring."

There are three basic types of compliance monitoring, and they are used differently by EPA's major programs, depending upon the nature of the regulated pollutants and the types of facilities involved:



Overflights are used to monitor facilities suspected of noncompliance with environmental laws.

Self-Monitoring - Most U.S. environmental laws require the regulated facilities to keep track of their own compliance status and report all or part of the resulting data to the responsible agency. This not only gives the agency data it needs; it helps to alert the company's top management to its progress in obeying the law. Fraudulent reporting is a serious offense under federal law, and inspections serve as a check on the data submitted by regulated facilities.

Inspections - Inspections are the backbone of EPA's compliance monitoring programs. They are the government's main tool for officially assessing compliance. An inspection is an examination into the environmental affairs of a single regulated facility, to see whether it is in compliance with environmental requirements. Inspection findings become the basis for a variety of possible actions EPA might take to bring the facility into compliance.

Area Monitoring - Used less often than inspections or self-monitoring, area monitoring looks at environmental conditions in the vicinity of a facility, or over a larger area. Methods used for area monitoring include ambient monitoring, remote sensing, and overflights. For example, the air quality reports given in local news broadcasts are one result of area monitoring.

Inspections

An inspection is intended to attain the following objectives, thereby advancing the goal of maximum compliance:

Assess Compliance Status - Inspectors observe the facility and identify specific environmental problems, if any exist. This information will enable EPA to determine whether the facility is in compliance.

On-site inspections are widely used by EPA to identify, examine, and remedy violations.

Collect Evidence - Inspectors collect and preserve evidence of any specific problems that appear to be violations. The evidence will be used in the resulting enforcement action to bring the facility into compliance.

"Show the Flag" - The inspection itself creates a visible, credible presence of the interest and power of the government in the eyes of managers at the regulated facility. This helps to deter violations at that facility and other similar facilities.

How Inspections Are Allocated

In theory, it might be desirable to inspect every regulated facility on a regular basis. No government program, however, has the funds and personnel to do that. As a result, each EPA program has a strategy or policy for allocating inspections to various segments of the regulated community, and ultimately to particular facilities.

Inspections are conducted for any of four reasons:

Routine - The largest number of inspections are routine inspections, conducted because the facility is within a segment of the regulated community that has been targeted for inspection.

For cause - In this case, there is some reason to suspect that an actual

violation exists. The stimulus may be a tip, a citizen's complaint, a self-monitoring report, or a referral from another agency. Data available from other EPA programs, such as the Toxic Release Inventory, may be cause for an inspection.

Case development support - Sometimes an initial inspection did not collect enough evidence to support an enforcement action, and a second inspection is needed to collect specific types of evidence requested by EPA enforcement attorneys.

Follow-up - Follow-up inspections are performed to check on facilities that were found in violation and have been ordered to comply through an enforcement action. If the facility is still out of compliance, EPA will usually escalate to a stronger enforcement action.

The Inspection Scheme

Each EPA program has an overall inspection scheme allocating a proportion of inspections to each of

Action by federal and state environmental agencies is often prompted by tips from concerned citizens who come across possible violations during their daily routine.

the categories described above, in accordance with the program's enforcement goals and priorities.

Each EPA program has its own approach to establishing enforcement goals and priorities. However, no matter what program is involved, three central questions govern priority-setting:

- How likely is it that a violation in a particular class of facilities would present a significant risk to human health and the environment?
- How likely is it that a class of facilities will violate environmental laws or regulations?
- How likely is it that inspections of a particular class of facilities will help deter violations?

In a high-priority class, every facility might be inspected. In lower-priority classes, only a small proportion of the facilities might be inspected.

Each EPA program has developed a "neutral administrative inspection scheme" setting out how the regulated community is divided into classes or segments for the purpose of targeting routine and follow-up inspections. Typical criteria for these segments include type of industry, size of facility, and amount of pollutants they handle.

The scheme is "neutral" in that the specific facilities within each class or segment are selected for inspection on a random basis.

Levels of Inspection

Inspections range from a quick walk-through by a single inspector, which might take less than half a day, to an inspection by a team of inspectors involving extensive collection of samples, which could take up to several weeks.

Each EPA program has its own terminology for its inspections. However, there are three general categories that describe the range of possibilities:

Getting ready for an inspection.

A technician analyzes collected physical samples at one of EPA's many laboratories.

Walk-through inspection - would generally be limited to a quick survey of the facility, checking only for the existence of control equipment, observing work practices and housekeeping, and checking as to whether there is a records repository. Such inspections help to establish an enforcement presence, and they can also serve as a screening process to identify facilities that should be targeted for more intensive inspection.

Compliance evaluation inspection - the most common form of inspection. It might include visual observations (as in the walk-through), review and

EPA regularly uses specially modified aircraft for aerial sampling and monitoring.

evaluation of records, interviews with facility personnel, and collection of other evidence, such as physical sampling. It might also include detailed review and critique of self-monitoring methods, instruments and data, and probing for details about process and control devices that are in place.

Sampling inspection - always involves pre-planned collection of physical samples. Sampling inspections are the most resource-intensive, since they involve advance planning of the sampling as well as laboratory analysis of the samples.

Less frequently used tecnniques include aerial photography and airborne laser instrumentation. EPA is constantly seeking new and more effective inspection methods to use in the fight against pollution.

The Inspector

The inspector's fundamental mission is to examine the state of compliance of a single regulated facility. Inspectors for EPA and state agencies are often the only environmental officials the plant manager and facility workers will ever see in person. EPA considers its inspectors a vital element of its contact with the public.

Inspectors have technical competence in the subject of the inspections they perform, are skilled in obtaining the crucial facts, and know how to collect and preserve evidence of noncompliance for use in enforcement actions. They also prepare inspection reports and serve as witnesses in court.

An expertly prepared inspection report, which clearly documents violations and includes samples of polluted materials, can be highly persuasive to a judge, a jury, or an administrative law judge. The inspector is often the key witness for the government in an enforcement case.

EPA conducts a training and development program for inspectors to assure that they have the legal, technical, administrative and communications skills needed to conduct compliance inspections. The Agency requires its inspectors to take a basic training course on environmental compliance inspections; specific EPA programs also conduct training to prepare inspectors for particular types of inspections.

Criminal Investigations— Catching Environmental Criminals

Those who **knowingly** violate environmental laws may be considered environmental criminals. In certain circumstances, under the Clean Water Act, negligent acts can also be construed as criminal violations. EPA and state agencies have criminal enforcement programs to bring these violators to justice.

The consequences of a criminal violation are more severe than those for civil violations. Criminal violations of environmental laws may be either misdemeanors or felonies, punishable by a fine of up to $50,000 per day or per violation, or by imprisonment for up to five years per day of violation, or both.

Both corporations and their executives have paid heavy fines for criminal violations, and company managers have gone to prison. The growth of criminal enforcement has provided a powerful incentive for voluntary compliance.

EPA's National Enforcement Investigation Center (NEIC) stations special agents at each EPA regional office. Th special agents are deputized by the Department of Justice as Special Deputy U.S. Marshals, with full power as law enforcement officers. They are authorized to execute search warrants, make arrests, and carry firearms.

How A Criminal Investigation Begins

The "initial lead," an allegation of potential criminal activity, usually comes to EPA's criminal investigation staff from other EPA employees, from state agencies, from citizens, or from company employees who suspect a problem.

Criminal investigations often grow from compliance inspections. Inspectors are always on the lookout for possible criminal violations, which involve knowing or willful behavior, fraudulent reporting, or negligent actions (under the Clean Water Act). EPA inspectors are prepared to call on EPA's criminal investigation staff when they encounter incidents such as:

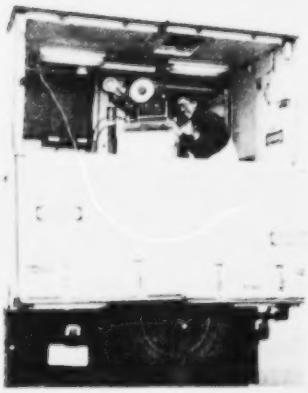
Conflicting data - When the company has two sets of records on the same incident, or its monitoring data is not consistent.

Conflicting stories - When an inspector is told one thing and sees something quite different, either in records or through observation.

Unsubstantiated data - When the inspector is given monitoring data for which there is no supporting record or documentation.

Deliberate actions - When an employee says he or she was told to do something the inspector knows to be illegal.

Claims of ignorance - When an employee claims to be unaware of established requirements, but the inspector discovers records in the



company's files showing knowledge of those requirements or where co-workers make statements during interviews showing that the employee had knowledge.

If the criminal investigation confirms that a criminal violation occurred, it may lead to a criminal prosecution. This will be discussed later in this booklet.

Clockwise from top—EPA investigators participate in a "vehicle stop and search" exercise, which involves chasing after and apprehending fleeing suspected felons; EPA uses many "high tech" tools in its investigations. Pictured here is a lidar gun, which is essentially a laser that is used to detect the contents of emissions from suspect sources; state and local law enforcement personnel participate in a hazardous waste investigations training program sponsored by EPA.

Enforcement Actions—The Tools We Use

An enforcement action is a response to something a person or company has done in violation of a law or regulation. (For this reason, it is often called an "enforcement response.") It is EPA's policy that every violation will be responded to in some way, and the type of response will be in keeping with the seriousness and circumstances of the violation.

EPA has a range of options at its disposal when contemplating an enforcement response against a violator, and these options differ from one law to another. They range from informal actions that take little effort to formal ones involving large commitments of time and money.

To EPA, these options are tools. Together they comprise EPA's enforcement tool kit, from which the most appropriate tool will be chosen for the job at hand.

The Goals of Enforcement Actions

In choosing the most appropriate enforcement response to a given violation, EPA aims to achieve several goals:

- **Correction** of the violation as quickly as possible.
- **Deterrence** of future violations by the same party or other parties.

Removing contaminated materials from a facility—one of the first of many steps to correct the violation

- **Fairness** to the regulated community by treating similar violations similarly.
- **Punishment** of serious, willful wrongdoing through criminal sanctions, such as fines and jail time.
- **Effective use of enforcement resources** by using the enforcement response that achieves environmental and health goals at the least expenditure in money and staff time.

Types of Enforcement Actions

There is a wide array of possible enforcement actions under the laws EPA administers. These different tools can be grouped in four "levels of action," differing in severity and in the scale of agency resources required.

A given violation may be handled by actions at more than one level. And, if a lower-level response fails to get results, it is EPA's policy to escalate to a higher level. The four levels of action are listed below in order of increasing severity:

Informal responses are administrative actions that are advisory in nature, such as a notice of noncompliance or a warning letter. In these actions, EPA advises the manager of a facility what violation was found, what should be done to correct it, and by what date. Informal responses carry no penalty nor power to compel action, but if they are ignored, they can lead to more severe actions.

Formal administrative responses are legal orders that are independently enforceable; require the recipient to take some corrective/remedial action within a specified period of time; require the recipient to refrain from some certain behavior, and require future compliance. These administrative actions are strong enforcement tools; if a person violates an order, EPA may obtain U.S. Court action to force compliance.

Administrative actions are usually the most expeditious way of dealing with a violation. They are resolved quickly, and they absorb less staff time and money than cases in the U.S. Court system. Therefore, they are used heavily by most EPA programs that have the authority for them. Congress has given EPA authority for administrative enforcement in more programs during recent years, as the effectiveness of this approach has become clear.

Administrative actions are handled under EPA's internal administrative litigation system, which is comparable to any court system, except that it is presided over by EPA's administrative law judges (ALJs). A violating company may appeal an ALJ's ruling to the EPA Administrator and may appeal the Administrator's final decision to the U.S. Courts. In practice, most violators do not pursue these appeal opportunities.

Civil judicial responses are formal lawsuits taken in the U.S. Court system by the U.S. Department of Justice (DOJ) at the request of EPA. They are normally used against the more serious or recalcitrant violators of environmental laws or to seek prompt correction of imminent hazards that pose an immediate threat to human health or the environment.

Civil judicial cases generally result in penalties and court orders requiring correction of the violation and requiring specific actions to prevent future violation (such as specialized monitoring by the facility).

Preparation of civil judicial cases requires more staff effort and money than administrative enforcement, and judicial cases sometimes take several years to complete. Therefore, EPA often responds to violations through administrative actions, where it has this authority.

Criminal judicial responses are used when a person or company has knowingly and willfully violated the law. In a criminal case, the Department of Justice prosecutes an alleged violator in the U.S. Court system, seeking criminal sanctions, usually including fines and imprisonment.

Criminal actions are often used to respond to flagrant, intentional disregard for environmental laws (such as "midnight dumping" of hazardous wastes) and deliberate falsification of documents or records.

Criminal cases are the most difficult type of enforcement response to pursue. They require special procedures for investigations and case development, and the government bears the burden of proof to show intent of the violator to commit the violation.

Enforcement Response Policies

EPA issues "enforcement response policies" to help assure that violators in similar circumstances are treated similarly. These policies guide EPA enforcement officials as they decide how to respond to specific violations, either in selecting the type of enforcement action to be used, or determining the penalty to be proposed.

Two EPA enforcement policies apply to all EPA programs and are implemented through specific policies adopted by the programs:

Penalties - EPA's policy on civil penalties explains how a proposed penalty figure should be calculated. Each penalty should, at a minimum, reclaim any economic benefits the violator obtained by not complying (the "benefit component"). In addition, the penalty should include an amount reflecting the seriousness of the violation (the "gravity component").

Finally, the preliminary figure may be increased or decreased to account for differences between cases such as the degree of willfulness or negligence by the violator, the violator's history of compliance or noncompliance, the violator's ability to pay, and the violator's degree of cooperation.

Timely and Appropriate Enforcement Response - Under EPA policy, the response to any violation should be both timely and appropriate. Each EPA program has defined the acceptable number of days (or "timeliness") from detection of the violation to an initial response for the types of violation that occur in that program. The program offices have also spelled out the appropriate enforcement responses for different types of violations. State agencies also apply these concepts through their own policies and enforcement programs.

These generic EPA policies are usually applied by the specific program offices when they draw up an enforcement response policy for a given law or set of regulations.

Enforcement Litigation—Resolving Violations

Litigation is the process of resolving an alleged violation through the courts. EPA uses both administrative and judicial litigation.

Administrative and judicial litigation involve similar processes, carried out in different settings. Administrative litigation cases are heard by EPA's own administrative law judges or hearing officers, while judicial cases are tried in the U.S. Court system. Both usually result in correction of the violation and the payment of penalties; criminal judicial cases may also involve a prison term for the violator.

Administrative Litigation - The vast majority of EPA's administrative enforcement cases are handled through adjudicatory proceedings. Five key procedural steps are involved, though many cases are settled prior to a formal decision of an ALJ or federal judge. The basic steps are:

a. The Complaint (the Accusation) - EPA issues a document (often called a Complaint) which describes the alleged violations, states what corrective action EPA is seeking, and may propose a penalty of a specified dollar amount. The Complaint also tells the alleged violator of the right to a hearing and how to use that right.

b. The Answer (the Denial or Excuse) - The person who receives the Complaint (the "Respondent") must file a written response, often called an Answer. The Respondent must specifically admit or deny each allegation made in the Complaint, and state any defenses for the alleged violations.

Many cases are settled at this stage, if the Respondent admits the allegations and pays the proposed penalty. Or the Respondent may negotiate with EPA seeking to lower the proposed penalty.

c. Motions - The Respondent or EPA may file written requests to help narrow the issues in the case or to gather more information to help prepare for the hearing.

d. Hearing - If the case has not yet been settled, a hearing is held. At the hearing, both sides are permitted to present their cases to the Hearing Examiner (ALJ).

e. Order - After the hearing, the ALJ renders an initial decision. The Respondent may appeal the decision to the Administrator of EPA. After any such appeal is completed, a final order will be issued, concluding the case.

A case can be settled at any time in the process. A settlement is usually documented with a Consent Agreement and a Final Order by the ALJ, which are binding on both EPA and the violator.

All final administrative orders can be appealed to the U.S. Courts.

Judicial Litigation - In judicial cases, the federal government sues a violator in the U.S. Courts, seeking to remedy the alleged noncompliance and obtain penalties. The key steps in civil litigation are:

a. The Complaint - On behalf of EPA, the Department of Justice files a document called the Complaint in a U.S. District Court, naming the alleged violator, describing the alleged violation, and stating the remedy and proposed penalty the government is seeking.

A criminal case begins differently. If it is a felony case, a grand jury issues an Indictment. In the less serious misdemeanor cases, the U.S. Attorney brings a charge by filing an Information.

b. The Answer - The alleged violator (called the Defendant) files an Answer to the allegations in the Complaint.

c. Discovery - In the discovery phase of a case, both the government and the Defendant work to discover potentially useful facts which are in the possession of the other side. This is done through formal procedures overseen by the judge, who may rule to resolve disputes.

As discovery expands, one or both sides may become more interested in settling the case, particularly if the cost of continuing the case weighs more heavily than the likelihood of winning it.

In criminal cases, generally the Defendant is not entitled to use discovery procedures.

d. Motions - Each side attempts to narrow the case by filing motions. This is used to apply leverage and push the other side to settle.

e. Trial - Trial is the time when the two sides present the facts to the judge or jury. Most cases never come to trial, because they have been settled at an earlier stage.

As in administrative cases, settlements can happen at any stage in the process. In a judicial case, the settlement often takes the form of a Consent Decree, signed by all the parties and the judge. A person who violates the terms of a Consent Decree may be penalized for contempt of court and may be subject to certain penalties called for in the Consent Decree ("stipulated penalties").

The Results Of An Enforcement Case

An enforcement action has several results that foster compliance. Perhaps most important, it deters other people and companies from violating environmental laws.

A case usually produces both a remedy and a penalty. Both are specific results for which the violator charged in the case will be responsible. These may result from either administrative or judicial cases, and either from a settlement or from a final decision in court or in administrative enforcement.

The remedy includes returning the violating facility to compliance and sometimes other remedial actions:

Compliance - The violator will be required to comply with the law. If the violation has not already been corrected, the violator is usually placed under a court-ordered schedule, with severe penalties for failure to comply with the order.

Benefit projects - In some cases, the violator agrees to carry out a project that will yield environmental benefits partly offsetting the harmful effects of the violation.

Penalties - The violator is required to pay a cash penalty (in criminal cases, a fine).

The penalty includes sanctions intended to deter the violator from falling into noncompliance again and to deter others from similar violations:

Imprisonment - In criminal cases, the violator may be sentenced to jail time, or placed on probation.

Contractor Listing - A facility that has violated the Clean Water Act or Clean Air Act may be placed on EPA's List of Violating Facilities. Listed facilities are not eligible to receive federal contracts, grants or loans from EPA or any other federal agency. Facilities that commit environmental criminal violations of other environmental statutes may be subject to possible suspension and/or debarment from receiving or entering into EPA or other federal agency contracts.

Organizing The Team — How EPA Achieves High Compliance

Enforcement of any environmental law requires systematic effort by many players. For every law, EPA must build an enforcement program suited to the particular law and designed to achieve compliance by the particular people or industries that are regulated by that law.

Regulations

EPA's environmental regulatory programs begin with laws which are enacted by the U.S. Congress. The environmental laws direct EPA to deal with specific environmental problems by regulating the activities of industries and other segments of the public that contribute to those problems.

To put such laws into effect, EPA issues regulations which interpret them and tell the regulated community precisely what standards they are required to meet under the laws, and by what date.

A well-written regulation helps to answer such questions as: Is my facility subject to this law? What would be acceptable performance under this law? What would be a violation? Am I required to submit any documents to EPA? When are they due, and to whom do I send them?

When the regulations are being drafted, EPA enforcement specialists are involved to make sure they are enforceable. Particular attention is given to making clear who is subject to the law and what is required of them, so it will be clear to EPA enforcement officials when a person is in violation.

Enforcement Strategies

For each new regulatory program, EPA develops a compliance and enforcement strategy. The strategy is a plan for deploying EPA's resources in ways that will achieve the highest possible compliance.

In developing this strategy, EPA considers the whole range of tools that might be used to influence the

behavior of the specific regulated community involved, and how each will be used from year to year as the program matures. Strategies commonly include the following elements:

- An outreach plan, indicating the efforts EPA will make to promote voluntary compliance.
- A compliance monitoring plan, indicating how EPA will monitor compliance and detect violations, such as through inspections and reporting by the regulated facilities. This plan also usually sets priorities for EPA's monitoring efforts in different segments of the regulated community.
- An enforcement response policy, outlining the different ways in which the regulation can be violated. This policy establishes how serious EPA considers each of the potential violations, and indicates the appropriate level of enforcement action and penalties associated with each.

The "strategy" is not usually a single comprehensive document, but rather a combination of guidance memoranda, plans and policies that together form EPA's strategy for achieving compliance for a given law or regulation.

The regulatory development process brings together representatives from government, business, environmental groups, and other interests in an effort to craft the best standards possible.

Budget

The amount of enforcement activity EPA conducts at any time is based on the funds available, determined through the federal budgeting process and appropriations by the U.S. Congress.

Every year EPA analyzes the relative seriousness of noncompliance in various programs and the enforcement efforts necessary in the coming year to deal with that noncompliance. Based on this analysis, EPA submits its enforcement budget as part of the annual EPA budget for approval by the President and for action by Congress.

Why People Obey The Law

What motivates a person or business to comply with an environmental law? Several forces may be at work, both for and against compliance. There are incentives and disincentives we call "natural" because they exist without any intervention by environmental agencies.

Natural incentives that favor compliance include:

Societal or moral factors, such as the fundamental sense of social responsibility to obey the laws, and the belief that protection of the environment is a civic and personal duty. Both of these examples reflect widely held values in the United States today.

Economic advantages of compliance, which may include both short-run advantages, such as reduced materials costs as a result of recycling, and long-run advantages such as avoiding bad publicity that could hurt a company's sales.

Natural disincentives that work against compliance include:

Concern for individual property rights, which leads some people to view environmental regulations as an intrusion on their right to enjoyment of their private property.

Economic advantages of noncompliance, which a company may reap by not installing the required

pollution controls or by gaining a competitive edge over competitors that did install them.

Fear of change, the unconscious belief that known and familiar practices are safe, while new and unfamiliar things are risky and possibly harmful.

How Enforcement Compels Compliance

Federal, state and local government agencies intervene in the conflict between incentives and disincentives to comply with **enforcement**, adding new motivating forces to tip the scales in favor of compliance. Two broad approaches are used:

Compliance Promotion - The agencies make systematic efforts to lead people to voluntarily comply with the law, tailored to the target audience and the circumstances involved in a particular law. Some compliance promotion efforts focus on strengthening the natural incentives, while others work to counteract disincentives.

For instance, EPA frequently mounts efforts to provide training and technical assistance to industries that must meet new requirements. Other efforts are aimed at the consumer, as was the case with EPA's television spot announcements intended to counteract the mistaken belief that unleaded gasoline would damage car engines.

Enforcement Actions - Enforcement actions are specific actions in which EPA or another agency seeks to compel a particular person or company to comply. These actions, which have already been discussed in this booklet, include civil and criminal prosecution in the courts, administrative orders, and other forms of action.

Enforcement actions take place after a violation has occurred; this is why they are often called "enforcement responses." Although directed at a specific violator, enforcement actions create a deterrent effect that motivates other people to comply.

The Broad Shadow Of Deterrence

Enforcement casts a broad shadow of deterrence which dissuades people from violating the laws. Specific enforcement actions are taken against relatively few violators at specific sites where inspections have revealed violations; yet, these relatively few actions are capable of fostering compliance by an entire industry at facilities all over the country.

Enforcement is the essential driving force that makes environmental laws work. Without enforcement, environmental laws would be largely words on paper, because there are powerful disincentives working against compliance. Enforcement evens the scales by adding a powerful incentive in favor of compliance.

The Elements of Deterrence

Enforcement stays the hand of the would-be violator and encourages the person who wants to comply. It does this chiefly by creating a **fear of detection and an assurance of fairness.**

The manager of a company fears being caught in violation of environmental laws and suffering the consequences. The manager may fear that the company will lose money through a penalty, that bad publicity will harm the company's sales, or that company managers will have to serve a prison sentence. The manager may also fear a salary cut or loss of his or her job as a result of an enforcement action.

A manager who is willing to comply with the law wants an assurance that competitors will not be free to ignore the law and, as a result, keep their prices lower or accumulate more profit. If enforcement is applied fairly and consistently, it gives this assurance of fairness (or "equity") to the cooperative manager.

Credible Enforcement Presence

In practice, environmental agencies create the fear of detection and the assurance of fairness by maintaining a credible enforcement presence. The following elements go into creating this presence:

Credible likelihood of detection - The managers of a company believe detection is likely if they know inspectors are active in visiting similar companies.

Serious consequences of detection - Managers believe detection will lead to serious consequences if they know that inspections of similar companies have led to enforcement actions resulting in heavy penalties or jail sentences.

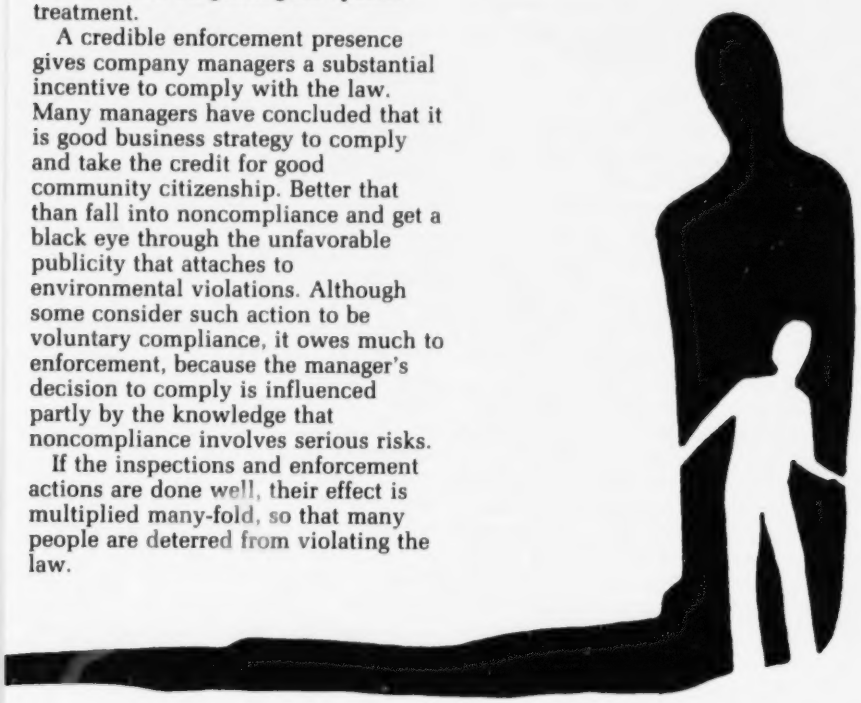
Swift and sure response - When managers see that EPA or state response to detection of a violation is quick and unavoidable, they know they cannot escape the consequences by giving excuses or gaining time through lengthy bargaining.

Fair and consistent response - When company managers see that EPA and state inspections and enforcement actions are fair and consistent, they perceive the assurance of fairness they need to comply. It also tells them the enforcement process is not open to favoritism or bargaining for special treatment.

A credible enforcement presence gives company managers a substantial incentive to comply with the law. Many managers have concluded that it is good business strategy to comply and take the credit for good community citizenship. Better that than fall into noncompliance and get a black eye through the unfavorable publicity that attaches to environmental violations. Although some consider such action to be voluntary compliance, it owes much to enforcement, because the manager's decision to comply is influenced partly by the knowledge that noncompliance involves serious risks.

If the inspections and enforcement actions are done well, their effect is multiplied many-fold, so that many people are deterred from violating the law.

When an agency focuses on deterring violations, it is using leverage to influence others to comply without having to deal with them one-by-one through enforcement actions. EPA uses deterrence to get maximum compliance from its enforcement budget.



How You Can Help

Every citizen has two vital roles to play in enforcement of environmental laws. First and foremost, each of us must be thoughtful about our own compliance with the laws, both at home and on the job. We can also encourage others to comply and, when we discover clear violations, take steps to resolve those problems.

Compliance at Home and on the Job

Few environmental laws focus on what we do at home, but a host of pollution problems are caused by what we do there. We must begin to ask ourselves, "How can I prevent pollution at home?"

Some of the everyday sources of pollution are: exhaust from poorly maintained cars and trucks; solvents from discarded paints, paint thinners and nail polish remover; waste crankcase oil; household cleaners; and garden poisons and fertilizers that are discarded or used too heavily. Also, waste paper and trash add a burden either to the solid waste problem (if buried in municipal landfills) or to air pollution (if burned). And wasteful use of electric power causes excess pollution at the power plant where it is generated. All these problems can be reduced by our actions at home. There are many environmental books and magazines which give step-by-step advice on how to do this.

Home activities that are federally regulated include: use of pesticides (the label must show EPA approval, and the product must be used as the label directs); cars must pass any emissions testing requirement in effect in your state; and filling of wetlands is usually prohibited.

Most workplaces in the United States are subject to some form of environmental regulation, because we now know that pollution comes from many sources large and small. Even neighborhood dry cleaners are now required to take proper care of the cleaning fluids they use. Look around you for possible problems at your workplace.

One of the main reasons for noncompliance at the workplace is that top management of businesses and governments is ignorant of problems that lower-level employees do not report. This institutional breakdown can be solved if employees alert upper management to the possibility that the company may be violating the law. You can help by telling your superiors about pollution problems you know about. In many organizations there is also an environmental officer or staff to whom employees can report potential problems.

Federal employees should be aware that federal facilities are, in almost all cases, **not** exempt from environmental laws. They are subject to the same environmental requirements and standards as private businesses. Federal employees should advise their superiors of pollution problems they see. If follow-up with superiors does not resolve the problem, reporting such problems outside the agency is an option, although a less effective one. (Information on "whistleblower" protection laws is available from the Government Accountability Project, 25 E Street, N.W., Washington, D.C. 20001.)

How to Recognize a Potential Pollution Problem

While some pollution is an unfortunate consequence of modern industrial life, there are national and state laws that limit the amount and kinds of pollution allowed, and in some cases these laws completely prohibit certain types of pollution. Sometimes it will be easy for a citizen to identify pollution that is a violation of the law and sometimes it will be difficult to identify the pollution problem without sophisticated equipment.

The U.S. EPA encourages the public to "keep their eyes and ears open" and to contact the appropriate local, state or federal authorities whenever they notice a potential pollution problem. There are a few general guidelines a citizen can use to identify a pollution problem. While the following guidelines will not identify all pollution problems, they will help citizens identify those pollution problems that should be reported to the appropriate authorities:

Unusual Does the type or source of the pollution seem unusual; i.e., something that is different from how similar things appear to work or from how they used to work? For example, is there a particular truck company that appears to operate vehicles that belch out black smelly smoke? Or, has the smoke from a smokestack changed recently, such that it now has a much darker look or a much more noticeable smell? Or, does your drinking water have an unusual odor or taste, or a particular color to it?

Odor Does the pollution present a strong odor or smell that is unpleasant? If the odor from the pollution burns your eyes, mouth, nose, or skin, you should immediately leave the area, contact local public health officials, and seek medical attention if the burning sensation continues after you leave the area.

Sight Does the pollution look nasty or foul? While everyone will have their own views on what this means, many of us will agree that certain things are offensive. For example, is there a strongly colored water discharge from a pipe going into a clear stream? Are there dead fish or animals in the

area of the pollution? Is there an area of dead grass or damaged vegetation near the pollution? Is dark black smoke coming out of a smokestack, so dark in fact that you cannot see through it at all? This is a likely air pollution violation. Similarly, is there a pipe discharge wastewater containing foam and visible solids, or that leaves a visible oil sheen on the water? This is a likely water pollution violation.

Secretive Is there something secretive or suspicious about the potential pollution-causing activity? For example, is a bulldozer operating at night in a marsh or wetland? This might be an indication that someone is illegally filling a wetland. Is a truck pouring wastewater into a sewer on the side of a road? This might be an indication that someone is illegally dumping hazardous waste. Is someone dumping garbage (in barrels, cans, or bags) at a site where it probably should not go, for example, in the back of a parking lot, in an alley, in the woods, or in someone else's trash dumpster?

If the answer to these kinds of question is yes, citizens should notify local or state authorities about their observations. These guidelines are not perfect, and thus they may fail to identify some pollution problems while occasionally identifying some legal activities as pollution problems.

Unfortunately, depressing sights such as this can be found all over the United States. EPA encourages the public's participation in identifying pollution problems.

But these guidelines should help citizens decide which types of things are potential pollution problems that should be reported to the authorities for investigation.

In identifying potential pollution problems, citizens should make careful observations by writing their observations on paper and even photographing the situation if possible. Refer to Section 15 for suggestions on how to reach the agencies that are equipped to do something about the problems you report.

Citizen Suits

In 1970, when Congress enacted the Clean Air Act ("CAA"), it included in this new environmental statute a provision allowing concerned citizens to bring lawsuits against both the EPA and air polluters for violations of the CAA. Specifically, this provision of the CAA allowed citizens to sue polluters who violated certain requirements of the Act and to sue the EPA if it failed to carry out a non-discretionary duty set forth in the Act.

This was the first time individual citizens had been empowered by Congress to bring a lawsuit under a federal environmental statute for the purpose of enforcing that statute. Congress chose to grant citizens this right for two primary reasons: Congress anticipated that the federal government, due to limited resources, would need assistance in order to obtain broad enforcement of the CAA. Congress also perceived the necessity of holding the EPA accountable for undertaking the many non-discretionary statutory duties that Congress required the EPA to fulfill. Out of a desire to assure that the environment would be adequately protected, and not merely on paper, Congress gave the citizens the powerful tool of the "Citizen's Suit" to ensure both that polluters were brought to justice and that EPA fulfilled its duties.

A citizen suit provision has been included in almost every federal environmental statute enacted since 1970, including the Clean Water Act, the Solid Waste Disposal Act (commonly called "RCRA"), the Toxic Substances Control Act, the Noise Control Act, the Endangered Species Act, the Marine Protection, Research, and Sanctuaries Act, the Comprehensive Environmental Response, Compensation, and Liability Act (commonly called "Superfund") , and, most recently, the Safe Drinking Water Act. Under each of these statutes Congress has granted citizens the power to initiate an enforcement action in federal court in order to ensure adequate protection of the environment.

Citizen suits have proved to be an important tool for the enforcement of the various environmental statutes. EPA and the states, despite limited resources with which to conduct their environmental compliance and enforcement programs, have taken thousands of enforcement actions against environmental polluters. Nevertheless, the number of

environmental violations often exceeds the federal and state enforcement resources available to prosecute violations. Citizen suits have been important in filling the gap.

There are innumerable citizen suit success stories. A brief example of just one of these lawsuits paints a picture of the vital role citizens have played in protecting the environment through the use of citizen suits.

In a recent citizen suit, *Sierra Club v. Simkins Industries, Inc.*, [847 F.2d 1109 (4th Cir. 1988)] a citizen group sued a Maryland paper mill for violating the Clean Water Act. The citizen group alleged that Simkins was discharging pollutants into the Patapsco River in violation of limitations established in Simkins' permit. The Court first determined that Simkins had, in fact, violated the Clean Water Act and then fined Simkins $977,000. The Court also ordered Simkins to fully comply with the Clean Water Act in the future. The citizen group was successful in remedying the specific pollution problem caused by Simkins' illegal wastewater discharges and also obtained a tough penalty which should help deter other would-be polluters from violating the law and polluting our environment.

In sum, Congress established citizen suit provisions under the various environmental statutes in order to help ensure that EPA and the regulated entities actually complied with the requirements of those statutes. As a result of the efforts of those who have brought citizen suits, the state of our environment has been improved.

For Further Information

The progress of environmental enforcement is analyzed and reported every year by EPA. Annual documents include:

- Enforcement Accomplishments Report. Published every year, usually in January, this report discusses the enforcement activities of the previous fiscal year, including statistics and reports on specific judicial cases.
- Overview of EPA Federal Penalty Practices. This annual report includes analysis of the penalties assessed by EPA against violators in cases concluded during the previous fiscal year.

Single copies of either report are available on request by writing to EPA, Office of Enforcement and Compliance Monitoring (LE-133), 401 M Street, S.W., Washington, D.C. 20460.

Environmental Agencies

State and Local Governments

State and local governments have responsibility for enforcing most environmental laws in the area where you live. You can locate them through your telephone directory. In most communities, the responsible agency is the city or county health department. At the state level, there is usually an environmental agency that carries out the pollution-control laws, while an agriculture agency often handles regulation of pesticides.

Principal Offices of EPA

EPA principally operates through ten Regional Offices, which should be able to help answer your questions if your state or local agencies have been unable to do so. Each Region has a staff specializing in each of the environmental programs discussed in this publication. To locate a person who can help you, call on the public affairs office in your EPA Regional Office.

These offices and the states they cover are:

Region 1:	Boston (617) 835-3424	CT, MA, ME, NH, RI, VT
Region 2:	New York City (212) 264-2515	NY, NJ, PR, VI
Region 3:	Philadelphia (215) 597-9370	DE, DC, MD, PA, VA
Region 4:	Atlanta (404) 257-3004	AL, FL, GA, KY, MS, NC, SC, TN
Region 5:	Chicago (312) 353-2073	IL, IN, MI, MN, OH, WI
Region 6:	Dallas (214) 255-2200	AR, LA, NM, OK, TX
Region 7:	Kansas City (913 757-2803	IA, KS, MO, NE
Region 8:	Denver (303) 564-7666	CO, MT, ND, SD, UT, WY
Region 9:	San Francisco (415) 484-1050	CA, HI, NV, Guam, American Samoa
Region 10:	Seattle (206) 399-1466	AK, ID, OR, WA